

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )

Annual Assessment of the Status ) CS Docket No. 95-61  
of Competition in the Market for )  
the Delivery of Video Programming )

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To: The Commission

REPLY COMMENTS OF PRIMESTAR PARTNERS L.P.

PRIMESTAR Partners L.P. ("PRIMESTAR"), by its attorneys, hereby replies to the comments filed in the above-captioned proceeding. Specifically, PRIMESTAR addresses the comments filed by DIRECTV, Inc. ("DIRECTV"), which suggest that the public's interest in a competitive marketplace would best be served should the Commission decide to foreclose PRIMESTAR's entry into the direct broadcast satellite ("DBS") arena, a playing field which DIRECTV has had almost entirely to itself for the past year. As will be fully demonstrated below, in light of its interest in protecting its enviable market position, what DIRECTV really seeks is to forestall the advent of effective competition in the DBS arena, a result which will deprive consumers of choice and significantly lessen the chances that the DBS service will continue to evolve into a fully competitive alternative means of delivering video programming.

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The comments filed in this proceeding by and large indicate that, over the past year, the direct broadcast satellite ("DBS") service has demonstrated its attractiveness to consumers and its viability as an alternative multichannel video programming distributor ("MVPD"). Based on the projections offered by the commenters, DBS has and will continue to play a major role in creating a competitive marketplace for video programming delivery. Whether or not the DBS service will develop to its fullest potential turns on critical decisions the Commission will soon make, decisions which will inevitably affect the competitive makeup of the DBS arena.

DBS permittees have long struggled to make the DBS service a viable one. To date, only one DBS permittee, Hughes Electronics Corporation ("Hughes") has successfully launched satellites and initiated program service. Hughes' subsidiary, DIRECTV, has essentially had the DBS service to itself since launching its first satellite in 1994.<sup>1</sup>

As DIRECTV suggests, "the question at this point of the assessment of MVPD competition is whether the Commission will allow DBS to continue its evolution into a formidable and competitive MVPD." DIRECTV Comments at 2. Contrary to DIRECTV's assertions, however, the evolution toward a competitive DBS marketplace will best be accomplished through PRIMESTAR's entry into the DBS arena.

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<sup>1</sup> A second DBS programming service, which is complementary to DIRECTV, is offered by United States Satellite Broadcasting ("USSB") using the same Hughes satellite.

PRIMESTAR is an experienced provider of direct-to-home ("DTH") satellite video services. It has offered consumers DTH service using medium-power Ku-band satellites since 1991. As it stated in its initial comments, however, PRIMESTAR's ability to continue to compete fully as a DTH provider is largely contingent on its ability to migrate from its existing Ku-band satellite, which will expire in 1996, to DBS satellites. PRIMESTAR has made arrangements with Advanced Communications Corporation ("Advanced") and Tempo DBS ("Tempo") to begin providing DBS service using frequencies and orbital slots assigned to Advanced in 1996. Once on the high-powered satellites, PRIMESTAR will be able to offer up to 200 channels using 18-inch diameter antennas. Its plans were disrupted, however, by the recent FCC International Bureau decision cancelling the authorization for the satellite system PRIMESTAR proposed to use to deliver service to its subscribers.<sup>2</sup> Applications for review of that decision are currently pending before the full Commission.

DIRECTV has chosen this proceeding as a forum to grandstand about its opposition to PRIMESTAR's entry into the DBS arena, attempting to cast the Advanced/Tempo/PRIMESTAR arrangement in a negative light. As it has in its pleadings filed in the Advanced proceeding, PRIMESTAR reiterates that DIRECTV's position is self-serving and

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<sup>2</sup> Advanced Communications Corporation, DA 95-944 (released April 27, 1995).

lacking in merit. Should the Commission uphold the International Bureau's decision, there will be a years long delay in initiating competitive DBS service while frequencies are reallocated and satellites are constructed. Such a delay inures to the benefit of DIRECTV, as delay will ensure that the current DBS operators reap higher profits and increase their market share.

It is germane to this proceeding that PRIMESTAR's proposed entry into the DBS arena represents the only chance for a competitive DBS marketplace near-term. It is only in the context of a competitive marketplace that DBS providers will be forced to evolve, exploring new technologies, customizing service offerings to consumers' tastes and establishing competitive prices. While DBS holds the promise of becoming a worthy competitor, it has not evolved to the point where it is consistently perceived as consumer-friendly, affordable, and accessible. To date, in opting for DBS as an alternative means of receiving multichannel video programming, consumers are faced with a single choice -- they must make the substantial commitment to purchase expensive equipment and deal with an assortment of different vendors for programming and service. PRIMESTAR's DBS package would offer subscribers the use of all equipment, high-quality entertainment programming delivered digitally for laser-disc quality picture and CD-quality sound, as well as ongoing maintenance and service starting at about \$1.00

per day -- allowing consumers to choose between two distinctive DBS services.

In its comments, DIRECTV suggests that, because it believes PRIMESTAR lacks the incentive to be a fully competitive DBS provider, the Commission should keep PRIMESTAR out of the DBS marketplace. DIRECTV Comments at 4. Under the guise of safeguarding the public's interest in a competitive marketplace, DIRECTV's transparent arguments are actually aimed at preventing competition in DBS. If DIRECTV believed that PRIMESTAR would be a competitor in name only, DIRECTV would welcome PRIMESTAR's entry into the DBS arena and anticipate continuation of its dominant status. It follows that DIRECTV should be PRIMESTAR's most ardent supporter, not its most vocal adversary. In truth, DIRECTV seeks to impede the advent of competition from a well-financed, experienced provider of DTH service whose attractive equipment/program/service package will offer consumers a choice.

PRIMESTAR's ties to cable create no underlying incentive for PRIMESTAR to suppress competition, as DIRECTV suggests. DIRECTV Comments at 4. As PRIMESTAR has documented fully in the Advanced proceeding, it makes little sense for PRIMESTAR's partners to spend over \$1 billion to implement its DBS system and then jeopardize their investment by failing to compete aggressively as a DBS provider.

As has been fully explored in the Advanced proceeding, both Congress and the Commission have explicitly rejected the need for cable/DBS cross ownership rules. Moreover, the Commission has acknowledged that cable operators could well bring capital, expertise, and the acceleration of DBS service to the public. Finally, adequate protection against the likelihood of any anticompetitive behavior resulting from the Advanced/Tempo/PRIMESTAR arrangement has been provided for in the conditions attached to Tempo's DBS license and in the PRIMESTAR consent decrees.

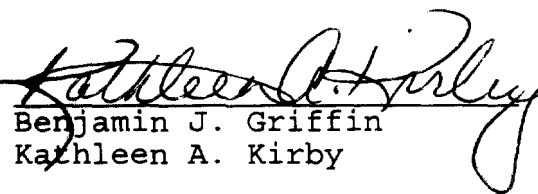
As PRIMESTAR stated in its initial comments, the American public wants interesting and diversified programming, delivered with excellent technical quality, and backed by responsive service organizations. PRIMESTAR successfully matches consumer demands. With the opportunity to become fully competitive through the use of the proposed DBS satellites, PRIMESTAR will be ready to play a significant role in the competitive video distribution marketplace. The Commission should disregard DIRECTV's

hollow rhetoric, and allow PRIMESTAR to pursue that role.

Respectfully submitted,

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July 25, 1995

CERTIFICATE OF SERVICE

I, Jette Ward, a secretary with the law firm of Reed Smith Shaw & McClay hereby certify that on this 25th day of July, 1995, I caused copies of the foregoing "REPLY COMMENTS OF PRIMESTAR PARTNERS L.P." to be delivered, via first-class mail, postage prepaid, to the following:

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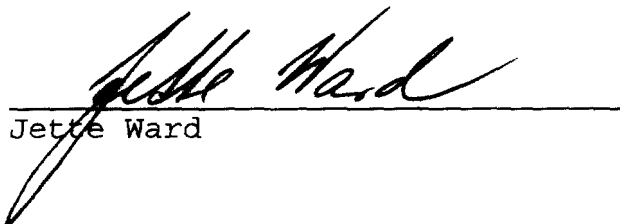
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